

REMARKS / ARGUMENTS

Claims 74 and 78-81 are pending in the present application. Of these, claim 74 is independent. Claims 74, 78 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acker et al. (U.S. Patent No. 6,605,084) in view of the teaching of Sherman et al (U.S. Patent No. 5,735,280). Claims 80 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acker et al. and Sherman et al. as applied to claims 74, 78 and 79 above, and further in view of the teaching of Marcus et al (U.S. Patent No. 5,295,484).

A Terminal disclaimer is enclosed to overcome the claim rejection in view of the pending claims of U.S. Application No. 10/029,889.

Discussion

Applicant submits that claim 74 is allowable over Acker in view of Sherman since the asserted combination does not disclose or suggest a control system "adapted to automatically change the frequency of the ablating elements when ablating the same tissue structure, each ablating element being activated to ablate tissue at a first frequency for a first plurality of time periods and to ablate the same tissue at a second frequency, which is different than the first frequency, for a second plurality of time periods."

Sherman discloses a controller which determines a center frequency and operates the transducer at this constant frequency to ablate tissue. The center frequency is determined by sweeping through a range of frequencies to locate the series and parallel resonant frequencies automatically. The processor then averages the two frequencies to determine the center frequency. The operational frequency is then set at the center frequency at which time a predetermined level of power is automatically applied to the transducer for performing the energy delivery process (see column 16, lines 51-59). During the procedure shown in Fig. 11, the operating frequency is maintained constant at the center frequency. Sherman also discloses that the controller may automatically and periodically sweep the frequencies to recalibrate the center frequency (column 17, lines 22-38).

Applicants submit that Sherman does not disclose a control system which automatically activates the ablating elements "to ablate tissue at a first frequency for a first

plurality of time periods" and "to ablate tissue at a second frequency for a second plurality of time periods." Sherman delivers ablating energy at a center frequency rather than at two different frequencies as claimed. Even if Sherman were to recalibrate the center frequency, such the transducers still would not be activated for a plurality of time periods at two different frequencies as claimed. Nowhere does Sherman suggest activation at two different frequencies each for a plurality of time periods. Sherman essentially discloses ablating tissue at only the center frequency and nowhere suggests a plurality of time periods at the center frequency.

Applicant further submits that the frequency sweeping technique of Sherman also does not render claim 74 obvious since the controller does not activate the transducers is to ablate tissue during the frequency sweeping technique. Sherman applies the predetermined level of power to ablate tissue only after the center frequency has been established and, thus, the transducers are not "activated to ablate tissue" during the frequency sweep as claimed.

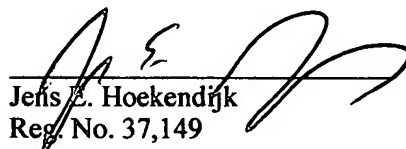
Acker clearly fails to make up the deficiencies in Sherman and, thus, Applicant submits that claim 74 is allowable over Acker and Sherman. Dependent claims 78-81 are allowable since they depend from allowable independent claim 74 and because they recite independently patentable features.

Conclusion

Applicant submits that all claims are in condition for allowance and an action to that end is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-412-3322.

Respectfully submitted,

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Date


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